

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**MERRILL E. DAVIS and JEANNE P. DAVIS,**

**Plaintiffs,**

**v.**

**1:10-CV-480  
(FJS/RFT)**

**CUMBERLAND FARMS, INC.,**

**Defendant.**

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**CUMBERLAND FARMS, INC.,**

**Third-Party Plaintiff,**

**v.**

**NORTHEAST PETROLEUM  
TECHNOLOGIES, INC.,**

**Third-Party Defendant.**

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**APPEARANCES**

**OF COUNSEL**

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**SCULLIN, Senior Judge**

### **ORDER**

Upon further review of the file in this matter, the Court hereby

**ORDERS** that the Court's January 29, 2013 Memorandum-Decision and Order is hereby

**AMENDED** as follows:

**DELETE** Section "**IV. CONCLUSION**" in its entirety, including footnote 4; and

**ADD** the following:

### **IV. CONCLUSION**

After carefully reviewing the entire record in this matter, the parties' submissions, and the applicable law, and for the above-stated reasons, the Court hereby

**ORDERS** that Cumberland's motion for summary judgment is **GRANTED**; and the Court further

**ORDERS** that Plaintiff Jeanne Davis' derivative claim is **DISMISSED**; and the Court further

**ORDERS** that NPT's motion for judgment on the pleadings is **DENIED** as moot; and the

Court further

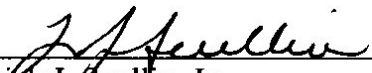
**ORDERS** that Cumberland's third-party complaint against NPT is **DISMISSED**; and the

Court further

**ORDERS** that the Clerk of the Court shall enter judgment and close this case.

**IT IS SO ORDERED.**

Dated: February 5, 2013  
Syracuse, New York

  
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Frederick J. Scullin, Jr.  
Senior United States District Court Judge